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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,917	01/26/2004	Robert Tomassi	TOMASSI-3	2957

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EXAMINER

TRAN, KHOI H

ART UNIT PAPER NUMBER

3651

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/764,917
Filing Date: January 26, 2004
Appellant(s): TOMASSI, ROBERT

Eric A. Lamorte
Lamorte & Associates, P.C.
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Yardley, PA 19067
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/27/2005 appealing from the Office action mailed 05/24/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Arguments

Appellant's arguments are acknowledged. The previous Final Office Action and answers to Appellant's arguments are followed:

Reference relied upon:

6,615,191

Seeley

09-2003

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Seeley.

The vending machine for vending regulated products and method of only permitting authorized users to use the vending machine disclosed by Seeley includes all the claimed features and in particular includes: (**claims 1, 3, 7, 11**) a money validation

unit for receiving and validating money, an identification card reader for reading an identification card (column 6, lines 32-37)*, a biometric characteristic scanner J for reading an actual biometric characteristic from a person standing in front of the vending machine (column 7, lines 20-25)*, a system controller I for enabling the vending machine to vend the regulated products only after a proper fee has been deposited and data read from the identification card is compared to the actual characteristic read by the biometric scanner (column 7, lines 5-36)., (**claims 2, 8, 12**) the biometric characteristic scanner J being one of a fingerprint scanner, retinal scanner, or a voice analyzer (column 7, lines 20-25); (**claims 5, 9, 13**) the vending machine vending a product that can only be sold to potential users over a predetermined age as broadly claimed in that the vending machine of Seeley is capable of distributing music, pictures and/or video material all of which have age limitations with regard to certain content; (**claim 4**) the step of enabling the vending machine only after a potential user has deposited a predetermined fee in the money validation system', and (**claims 6, 10, 14**) the vending machine vending pre-purchased products that are to dispensed only to a potential user who pre-purchased the product in that stored works/products can be registered for and paid for in advance (column 7, lines 50-54).

Response to Arguments

Appellant argued that Seeley 6,615,191 allows "anyone" to purchase the product from the vending machine at any time. "The vending machine works for anyone with money. The Seeley Patent only address the use of the software by authorized people after it is purchased from a vending machine and taken home". Appellant argued that

the vending machine of Seeley '191 does not permit only authorized users to use the machine. This argument is not persuasive. Seeley '191 does in fact permit only authorized users to use the machine. Seeley '191 allows only authorized users, verified biometrically registered users, to enable the vending machine at a predetermined discounted price. Non-authorized users cannot enable the vending machine with the monetary value at said discounted price. Seeley '191 vending machine permits only authorized users to have access to the vending machine for a set price. Non-authorized users with such set price cannot enable Seeley '191 vending machine. In addition, since Seeley '191 anticipates all structural and method steps of the claimed invention, it is interpreted that Seeley '191 also permits only authorized users to use the machine.

Appellant agreed that Seeley 6,615,191 does contain among other things: biometric smart card for registering a user with the vending machine, and biometric verification means for verifying the previously registered user. However, Appellant argued that Seeley '191 verification step is done at home, prior to its usage by a user, after the software product has been vended from a vending machine. Appellant argued that the sale is not dependent upon the biometric data, but the authorization to later run the software is. This argument is not persuasive. Apparently, Appellant has failed to appreciate Seeley '191 teaching that the vending machine and the software player can all be located in a single machine (column 8, lines 46-51). This means that a user to said single vending machine, in order to access the machine at predetermined price, will have to biometrically register and then verified by the system in order to enable the vending machine. Hence, the registering and verification steps are done at a single

location. The term "enabling the vending machine" is interpreted to be the complete vending/enabling of the software. Seeley '191 remains anticipatory to the claimed invention.

(8) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte dismissal of the appeal* as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR

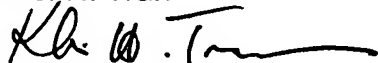
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41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

Khoi H. Tran



Conferees:

Gene Crawford (SPE)

Patrick Mackey (Primary Examiner)

12/14/2005

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(9) Evidence Appendix

None

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(10) Related Decision Appendix

None